



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-C-L-

DATE: MAY 14, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a naturopathic physician, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, and a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was serving as a naturopathic physician at her private medical practice in [] Minnesota.⁴ The Petitioner asserted that she intends “to continue to practice naturopathic medicine on patients with cancer and other medical conditions or diseases for which treatment options have either been exhausted or not yet explored.” She also noted that “[a]proximately thirty-five active patients currently comprise [her] medical practice.” The Petitioner further stated:

I have my own office located in [] Minnesota, where I see my patients. . . . However, I must also travel to my patients’ residences, and I travel with them, which is often required, when I refer them to a specialist who will collaborate with me in implementing their treatment plans. . . . My integrative medical practice “fills the gap” for an increasingly large cancer population in rural Minnesota that is often elderly, of low income, and unable to afford the expensive cancer treatments and follow-up regimens needed to manage the severe side effects caused by cancer treatments such as chemotherapy, radiation, and immunotherapy.

The record includes letters of support from patients explaining how the Petitioner provided them with quality medical care and improved their health. In addition, the Petitioner presented articles discussing healthcare barriers and disparities in rural areas, healthcare access in rural Minnesota, solutions to Minnesota’s rural healthcare problems, the economic impact of cancer, insurance barriers to medical care, and reductions in healthcare costs attributable to naturopathic medicine. She also provided articles describing naturopathic doctors’ increasing role in oncology care, physician shortages in rural areas, and challenges faced by rural cancer patients. Furthermore, the record contains guidance regarding naturopathic practice and care from the American Association of Naturopathic Physicians, an article in the *New York Times* about the benefits of integrative medicine, and a report from the Integrative Healthcare Policy Consortium entitled “Integrative Health and Medicine: Today’s Answer to Affordable Healthcare.”

With the motion, the Petitioner submitted information about clinical trials and studies from the National Institute of Aging, a research article indicating that screening logs have the potential to

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner provided evidence that she received a “Doctor of Naturopathic Medicine” degree from the [] (2004).

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

improve participation of underrepresented populations in clinical trials, and a published study evaluating racial and ethnic differences in clinical trial enrollment. In addition, she presented articles discussing cancer prevalence, cancer types based on race and ethnicity, breast cancer integrative oncology care and its costs, and productivity losses attributable to cancer-related mortality. Furthermore, the record contains published studies describing the cost-effectiveness of naturopathic medicine in treating anxiety disorders, chronic low back pain, and cardiovascular disease. The Petitioner also offered an article examining naturopathic medicine in primary care practice.

Regarding the first prong of the *Dhanasar* framework, the Director concluded that the Petitioner's "services appear to only impact a population in Minnesota" and that the evidence was insufficient to show that her "work has had an impact beyond her area of practice." While the record demonstrates that the Petitioner's proposed work as a naturopathic physician has substantial merit, for the reasons discussed below, the evidence is not sufficient to show this endeavor's national importance.

On appeal, the Petitioner contends that "she submitted numerous articles on the benefits of naturopathic medicine and its impact on the cost of healthcare." In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner further argues that "while her work as a naturopathic medicine [*sic*] is situated in Minnesota, the integrated medical approach to treatment plans for her patients often requires her to travel with them to collaborate with physicians from various medical and clinical research facilities throughout the United States." She notes that she "facilitated the enrollment" of one of her patients "into an MD Anderson Cancer Center clinical trial" for treatment of his aggressive prostate cancer. In facilitating this patient's enrollment, the Petitioner indicates that she "sought the assistance and collaboration of doctors at MD Anderson." In addition, the Petitioner asserts that she sought the assistance of a colorectal surgeon at the Nebraska Medical Center to perform surgery on one of her oncology patients and accompanied that patient to medical appointments in [REDACTED]. The record includes letters of support from the aforementioned two patients and copies of their medical records.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. With respect to the Petitioner's proposed care and treatment of patients, the record does not establish that her clinical work would impact the naturopathic field and healthcare industry more broadly, as opposed to being limited to the patients she serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a naturopathic physician does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

The Petitioner maintains that her treatment plans improve the medical conditions of her patients and reduce the number of treatments they require, thereby decreasing their immediate healthcare costs. In addition, she previously stated that by improving the health of her patients, her proposed work broadly enhances societal welfare by increasing her patients' "productivity and that of their families and employers." The Petitioner further asserted that as her medical "practice grows, she will need staff to assist her in patient intake, administrative tasks, and other functions typical of a medical practice." The record, however, does not demonstrate that her medical practice has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the Petitioner contends that her "administrative time would be mitigated if she hires 1-2 people to her staff," the record does not include sufficient information or evidence regarding any significant projected job growth attributable to her medical practice. The Petitioner has not shown that benefits to the regional or national economy resulting from expanding her medical practice, reducing her patients' healthcare costs, or increasing their job productivity would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work as a naturopathic physician does not meet the first prong of the *Dhanasar* framework.

Finally, the Petitioner argues that her "volunteer participation in writing questions" for the Naturopathic Physicians Licensing Exam (NPLEX) "has potential prospective impact" relating to "national interests in healthcare reform and public safety," thereby establishing the national importance of her NPLEX work. Her appellate submission includes a November 2018 letter from the executive director of NPLEX stating:

[The Petitioner] recently spent 13 hours volunteering time and expertise to write items for the NPLEX Examinations. We recognize the amount of commitment this requires.

Construction of the NPLEX Examinations involves the help of more than 90 individuals, all of whom offer valuable time and invaluable experience to improving the quality of the NPLEX.

As stated above, the Petitioner's proposed endeavor involves serving patients as a naturopathic physician at her private medical practice. She has not shown that the amount of time she intends to devote writing items for NPLEX is sufficient to meet the first prong of the *Dhanasar* framework. Regardless, the evidence does not demonstrate that the implications of her proposed volunteer service for NPLEX and the potential prospective impact of this work rise to the level of national importance.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered

as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of G-C-L-*, ID# 3135063 (AAO May 14, 2019)